



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 14-02562
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: Alex Peterson, Esq.

04/30/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 12, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 9, 2014, and requested a hearing. The case was assigned to me on February 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 18, 2015, setting the hearing for March 3, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection.

Department Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified, called two witnesses, and offered exhibits (AE) A through P, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 11, 2015.

Findings of Fact

Applicant is 53 years old and has worked for a government contractor for 13 years. She holds a bachelor's degree. She is divorced and has two adult children. From time to time, she provides financial support to both of her children. She has no military service, but has held a security clearance since 2002.¹

The SOR alleges Applicant was delinquent on multiple accounts and used a company credit card to pay personal expenses. The debts were listed on credit reports from February 2013 and March 2014. Applicant admitted SOR ¶¶ 1.a – 1.e, 1.h, 1.j, and 1.l. She denied SOR ¶¶ 1.f- 1.g, 1.i, and 1.k (as being a duplicate account with 1.e).²

Applicant's financial difficulties began because of several medical conditions affecting her health and ability to work starting in 2009 and continuing for years after. She also provided financial support so that her daughter could gain conservatorship over her father. She was forced to take long-term disability payments at about 75% of her normal salary after having surgery in 2009. In 2010, she was able to go back to fulltime work, but then her father became ill and she was required to care for him. Since she did not have annual leave built up, she was required to take this time off in an unpaid status. She underwent another surgery in 2012, which again required her to miss work in a non-pay status. Over the course of 2012, 2013, and 2014, she lost an average of approximately \$18,000 of annual pay because of the unpaid time off she was required to take. During her security clearance interview with a defense investigator, she first became aware of the full scope of her financial problems and began to address them. The status of the debts is as follows:³

SOR ¶ 1.a:

This is a tax debt that resulted in a \$283 lien. The tax was paid and the lien was vacated in April 2013. This debt is resolved.⁴

SOR ¶ 1.b:

This is a debt based upon a voluntary repossessed vehicle in the amount of \$9,789. Applicant returned the car when she could not make the payments because of

¹ Tr. at 122-123; GE 1.

² Answer; GE 2-3.

³ Tr. at 35-37, 40, 45, 83-85, 87-91, 93.

⁴ Tr. at 60-61; AE F.

her loss of income due to her foot surgery. She attempted to contact the creditor to negotiate a settlement, but was told the account was charged-off. This debt is unresolved.⁵

SOR ¶ 1.c:

This is a consumer debt in the amount of \$8,482. Applicant settled this debt in June 2011. This debt is resolved.⁶

SOR ¶ 1.d:

This is a consumer debt in the amount of \$1,149. Applicant presented documentation showing that she established a payment plan to pay this debt and made the last payment in February 2015. This debt is resolved.⁷

SOR ¶¶ 1.e and 1.k (duplicate of 1.e):

This is a consumer debt in the amount of \$1,264. Applicant presented documentation showing that she established a payment plan to pay this debt and made the last payment in December 2014. This debt is resolved.⁸

SOR ¶ 1.f:

This consists of two telecommunications debts to the same provider/creditor in the amounts of \$773 and \$699. Applicant presented documentation showing she paid one debt and disputed the second debt. These debts are resolved.⁹

SOR ¶ 1.g:

This consists of six medical debts in the amounts of \$175, \$96, \$96, \$96, \$90, and \$55. Applicant could not locate the collection company holding the accounts. None of the accounts appear on her March 2015 credit report. These debts are resolved.¹⁰

⁵ Tr. at 62-63.

⁶ Tr. at 64; AE G.

⁷ Tr. at 66; AE E, J.

⁸ Tr. at 67-69; AE H-I, K.

⁹ Tr. at 70-72; AE A (p. 16-17), L-M, O.

¹⁰ Tr. at 73; AE A.

SOR ¶ 1.h:

This is a telecommunications debt in the amount of \$141. Applicant presented documentation showing that she paid this debt in September 2014. This debt is resolved.¹¹

SOR ¶ 1.i:

This is a telecommunications debt in the amount of \$136. Applicant disputed this debt. This account does not appear on her March 2015 credit report. This debt is resolved.¹²

SOR ¶ 1.j:

This is a medical debt in the amount of \$118. Applicant presented documentation showing that she paid this debt in September 2014. This debt is resolved.¹³

SOR ¶ 1.k:

This is a duplicate debt with 1.e above. This debt is resolved.¹⁴

SOR ¶ 1.l:

Applicant explained that she used her company-issued credit card for business purposes on several trips and then when she got back home she continued to use it for personal use not realizing it was her company card. When notified by her company, she stopped using her company card for personal use and has not used it since then. She keeps the card at work so she can't inadvertently use it for personal use in the future. She paid the balance that was owed due to her personal use.¹⁵

Applicant testified that she currently has disposable income of about \$300-\$400 at the end of each month. She has \$53,000 in a retirement account. She received financial counseling from her bank. A coworker testified that she has worked with Applicant since 2003 and that she is a good performer and a truthful person.¹⁶

¹¹ Tr. at 73-74; AE N.

¹² Tr. at 76; AE N.

¹³ Tr. at 76; AE N, P.

¹⁴ Tr. at 67-69; AE H-I, K.

¹⁵ Tr. at 79-80.

¹⁶ Tr. at 48, 53, 56.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant had multiple delinquent debts and used her company credit card for personal use. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c). However, she credibly testified that her personal use of her company credit card was inadvertent. AG ¶ 19(d) does not apply.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The delinquent debts attributed to Applicant are recent. She has paid all but one of the non-disputed debts. Since she has made a concerted effort to repair her financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's debts became delinquent when she lost an average of \$18,000 from her annual gross pay in years 2012-2014 because of medical conditions that caused her to go into an unpaid work status. This was a condition beyond her control and, once she was able to do so, she acted responsibly by contacting her creditors and arranging for payments. She was able to pay most of the remaining delinquent debts. AG ¶ 20(b) applies.

Applicant received credit counseling from her bank. She has made a good-faith effort to resolve the debts and contacted the creditors for SOR ¶ 1.b and ¶ 1.g, but was unable to work out a repayment plan or locate the collection company. She supplied documentary evidence showing her disputed debts. AG ¶ 20(c), ¶ 20(d), and ¶ 20(e) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's medical conditions that resulted in lost time from work without pay, which affected her financial status. I found Applicant to be honest and candid about the circumstances that led to her debts. She took action to resolve her debts. I find it unlikely that Applicant will find herself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge